



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8EPR-ER

November 18, 2009

Robert Schmidt
EA Land Investment, LLC
480 West 800 North, Suite 203
Orem, Utah 84057

Re: Vermiculite Intermountain Site; Salt Lake City, UT

Dear Mr. Schmidt:

I am writing concerning the property at or around 333 West 100 South, Salt Lake City, Utah, which was formerly the site (Site) of a vermiculite exfoliation plant which processed thousands of tons of amphibole asbestos-contaminated vermiculite ore from a mine in Libby, Montana. EPA is in the process of completing a removal action at the Site to clean up exposed asbestos on the ground surface and inside two buildings nearby and to implement post-removal site controls. However, additional Libby asbestos (LA) is present at the Site underneath an asphalt parking lot and other areas surrounding the Frank Edwards building. It is EPA's understanding that the portion of the Site you are planning to purchase is situated at the southwest corner of 100 South and 300 West, as identified on the attached plat map.

The bona fide prospective purchaser provision states that a person meeting the criteria in 42 U.S.C. Section 101(40) is protected from CERCLA liability. To the extent EPA's response action increases the fair market value of the property, EPA may have a windfall lien on the property. The windfall lien is limited to the increase in fair market value attributable to EPA's response action, capped by EPA's unrecovered response costs. To qualify as a bona fide prospective purchaser, a person must (among other requirements) take "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases. You have asked what actions you must take, as the prospective owner of the property, to satisfy the "reasonable steps" criterion.

As noted above, EPA has conducted a removal action at the Vermiculite Intermountain Site and has identified environmental concerns. Based on the information EPA has evaluated to date, EPA believes that, for an owner of the property, the following would be appropriate reasonable steps with respect to the LA contamination found at the property:

Reasonable Steps

One objective in identifying reasonable steps is to prevent the release of LA from underneath the impermeable surface at the site. The property is currently covered with an asphalt paved surface that is preventing emissions of LA from the Site. This asphalt paved surface (the "cap") must be maintained in good condition. If the cap deteriorates in such a manner that LA might be released, then repairs must be made to the cap.

If the cap must be disturbed for any reason, the objectives of the reasonable steps must include protecting workers, protecting nearby receptors, and protecting the removal action remedy by not introducing LA contamination into clean areas. Reasonable steps include, but are not limited to:

1. Notification and Written Workplan - The property owner must notify the Utah Department of Environmental Quality (UDEQ) and EPA in advance regarding any project which will disturb the cap. The property owner must submit a written workplan to UDEQ and EPA describing the nature of the project and the work practices and engineering controls to be used to prevent emissions of LA. EPA and UDEQ will coordinate to determine the appropriate level of government oversight and will notify the property owner which agency will be conducting oversight of the project. The property owner must receive written approval from either UDEQ or EPA prior to beginning a project that will disturb the cap.
2. Existing Asbestos Regulations - The federal government and the State of Utah have regulations regarding asbestos worker certification and asbestos work practices. These rules generally apply to "asbestos containing material" (ACM) which means any material containing more than one percent asbestos, according to the definition set forth in the regulations. Therefore, any activity at the Site which triggers the regulations should be conducted, at a minimum, in compliance with the regulations. The Utah Division of Air Quality Asbestos Program must be notified of any asbestos-related work practices.

However, it should be noted that the one percent asbestos concentration levels commonly cited and used for regulatory purposes under the EPA Toxic Substances Control Act (TSCA) abatement program and other similar laws were established on the basis of analytical capability at the time and do not have any relationship to the actual health risks associated with the handling or disturbance of asbestos. A release of asbestos, even if it is below a one percent concentration, can be regulated as a release of a hazardous substance under CERCLA. Therefore, work practices and engineering controls may need to be implemented during any proposed project beyond what the existing federal and state regulations require.

3. Worker Health and Safety - The U.S. Occupational Safety and Health Administration (OSHA) has regulations for workers exposed to asbestos, including permissible exposure limits (PELs), employee notification, monitoring methods, etc. The OSHA regulations state that the employer shall ensure that no employee is exposed to an airborne

concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in the regulations. Any activity at the Site which triggers the OSHA regulations should be conducted in compliance with the regulations

It should be noted that when OSHA established this PEL for workers, it stated that its "risk assessment....showed that reducing exposure to 0.1 f/cc would further reduce, but not eliminate, significant risk." These health risks are further discussed in EPA's endangerment memo dated March 18, 2004, which was attached to the Action Memo for the cleanup at this Site.

In addition, investigations by EPA have found that soils contaminated with very low concentrations of LA can easily result in high airborne fiber exposures when disturbed. Therefore, the soils at the Site which contain detectable LA at trace levels less than 0.2 percent could generate airborne concentrations of LA that are potentially hazardous when disturbed.

"Reasonable steps" includes keeping worker exposures to LA at the Site to an absolute minimum, even if the OSHA regulations are not triggered. "Reasonable steps" includes requiring respiratory protection, employee training, engineering controls (e.g., wetting or containment), air monitoring, etc. if soils containing trace levels of LA under the cap at the Site must be disturbed.

4. Receptors near the Site – EPA requires that persons near the Site not be exposed to LA during any activity that disturbs the cap. Any workplan for a proposed project should describe how this will be accomplished with activities including, but not limited to, engineering controls, air monitoring, and restricting access to the Site.
5. Decontamination – The workplan should describe decontamination procedures and adequately delineate workzones and decontamination zones for any proposed project. Decontamination must be considered for workers, equipment, vehicles, or any other thing that enters into the work zone. The workplan should also address the collection and disposal of decontamination water.
6. Handling, Transport, and Disposal – A considerable amount of time, funds, and effort have been expended to clean up contaminated soils at the Site on the PacifiCorp-owned property and inside the two nearby buildings, Artistic Printing and the Frank Edwards Building. Any activity that may possibly disturb the LA that remains underneath the cap must not re-contaminate the ground surface or nearby buildings. Procedures must be established and described in the workplan for preventing emissions from any LA-contaminated soils as they are excavated and transported for disposal. Contaminated soils, clothing, and other LA-contaminated waste should be containerized and treated as ACM. The materials should be transported to, and disposed of, as ACM at a landfill permitted to receive ACM.

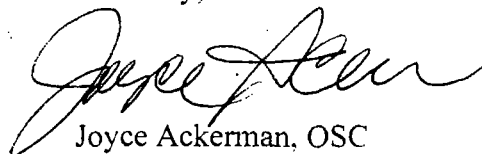
7. Experienced Workers - EPA strongly recommends that any activity that will disturb the cap be conducted by workers experienced with outdoor asbestos cleanups, preferably workers experienced in cleaning up LA contamination. Depending on the scope of the proposed project, utilizing inexperienced workers may be a cause for rejecting the workplan.

This letter does not provide a release from CERCLA liability, but only provides information with respect to reasonable steps based on the information EPA has available to it. This letter is based on the nature and extent of contamination of LA known to EPA at this time. If additional information regarding the nature and extent of hazardous substance contamination at the Vermiculite Intermountain Site becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken. As the property owner, you should ensure that you are aware of the condition of your property so that you are able to take reasonable steps with respect to any hazardous substance contamination at or on the property.

Please note that the bona fide prospective purchaser provision has a number of conditions in addition to those requiring the property owner to take reasonable steps. Taking reasonable steps and many of the other conditions are continuing obligations of the bona fide prospective purchaser. You will need to assess whether you satisfy each of the statutory conditions for the bona fide prospective purchaser provision and continue to meet the applicable conditions.

If you have any questions, please contact me at 303-312-6822.

Sincerely,

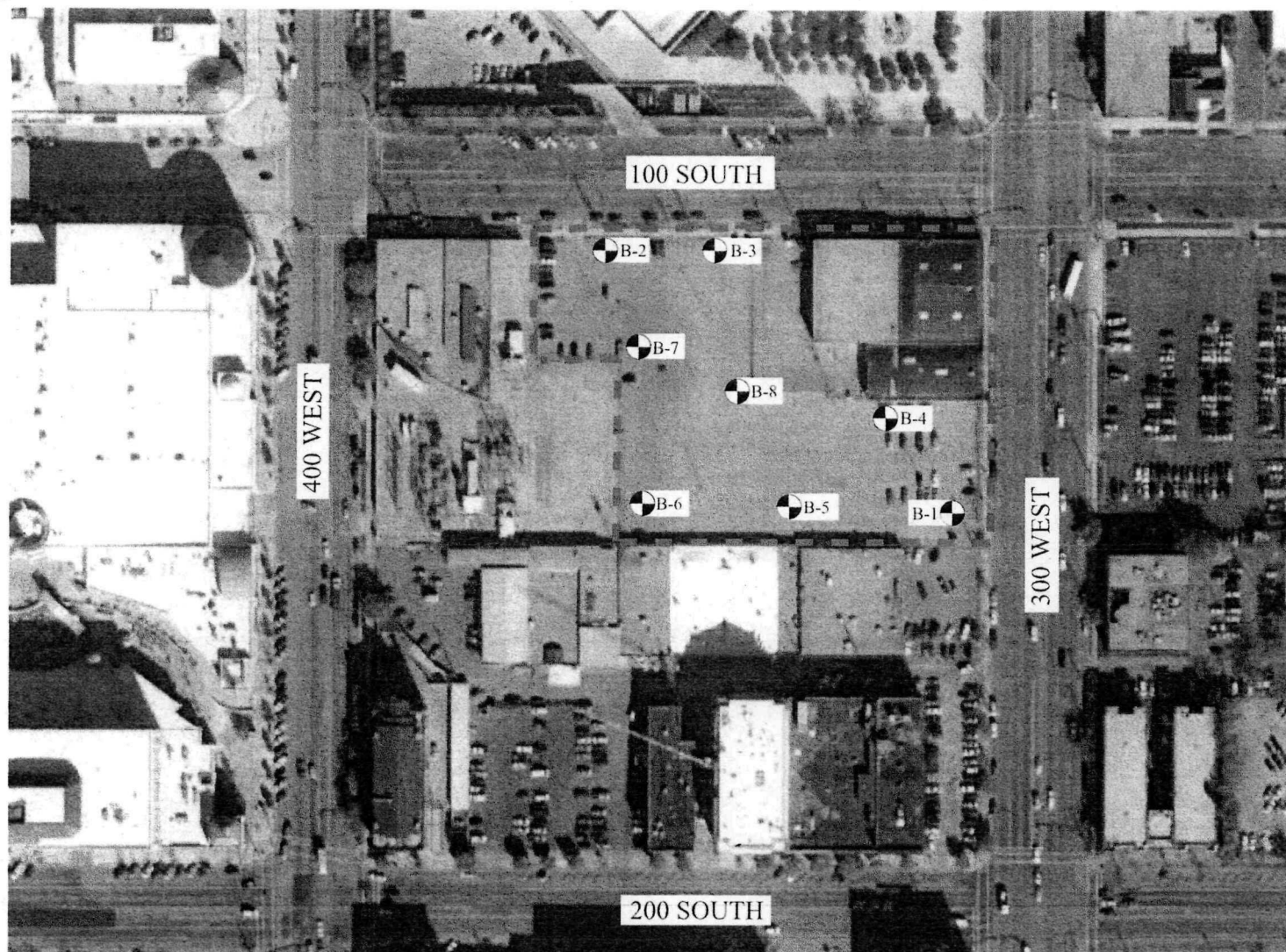


Joyce Ackerman, OSC

Enclosure



PEG DEVELOPMENT
JOB NO. 0916-002-09



REFERENCE:
ADAPTED FROM AERIAL PHOTOGRAPH
DOWNLOADED FROM 2009 GOOGLE EARTH

NOT TO SCALE

FIGURE 2
SITE PLAN
 **GSH**
Gordon Spilker Huber
Geotechnical Consultants, Inc.